IN THE

Supreme Court of the United States

October Term, 1977

No. A-1015
77-99

UTAH STATE UNIVERSITY OF AGRICULTURE AND APPLIED SCIENCE, *Petitioner*,

v.

BEAR, STEARNS & CO. et al., *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

ROBERT B. HANSEN
Utah Attorney General

DAVID L. WILKINSON
Assistant Attorney General

State Capitol
Salt Lake City, Utah 84114

Counsel for Petitioner

INDEX

NOTE: The Appendices were not printed by the date this Petition must be filed. They will be presented separately later.

CITATIONS

CITATIONS — (Continued)

IN THE

Supreme Court of the United States

October Term, 1977

No. ....

UTAH STATE UNIVERSITY OF AGRICULTURE AND APPLIED SCIENCE, *Petitioner,*

v.

BEAR, STEARNS & CO. et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

This petition is filed on behalf of Utah State University of Agriculture and Applied Science ("the University"), appellant in each of eight companioned cases below.

The following list shows the respondent in each of the eight cases below by case number:

No. 75-1854 — Bear, Stearns & Co.
No. 75-1855 — Blyth Eastman Dillon & Co.
No. 75-1856 — Bosworth, Sullivan & Company
No. 75-1858 — Hornblower & Weeks — Hemphill, Noyes, Inc.
No. 75-1860 — Shearson, Hammil & Co.
No. 75-1861 — Sutro & Co.
Nos. 75-1862 — Merrill, Lynch, Pierce, Fenner &
75-1330 Smith, Inc.

The petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on January 24, 1977, in all cases except No. 75-1861.

OPINIONS BELOW

The Opinion of the Court of Appeals has been published at 549 F. 2d 164 (1977). The opinion is set forth in Appendix A hereto.

The Opinion of the Court of Appeals (Appendix A) treats eight companioned appeals. Seven of those appeals (75-1854 to 75-1856, 75-1858 and 75-1860 to 75-1862) were from an order of the United States District Court for the District of Utah, Northern Division, dismissing the complaints in each of seven cases. The opinion of the District Court, treating all seven cases, is set forth in Appendix B hereto. That opinion has not been published in the official reports.

The eighth appeal treated by the Opinion of the Court of Appeals (76-1330) was from an order of the United States District Court for the District of Utah, Northern Division, dismissing the complaint in a separate case. The opinion of the District Court in that case is set forth in Appendix C hereto. Likewise, it has not been published in the official reports.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on January 24, 1977.

The University filed a petition for rehearing and suggested the rehearing be held *en banc*. The University's

petition was supported by a brief *amicus curiae* submitted by the Board of Governors of the Federal Reserve System.

On March 18, 1977, the Court of Appeals for the Tenth Circuit entered an order denying the University's petition for rehearing.

On June 3, 1977, this Court ordered that the time for filing a petition for writ of certiorari be extended to *July 18, 1977*.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1) (1970).

QUESTION PRESENTED

Whether illegal extensions of credit by a stockbroker in violation of Regulation T of the Federal Reserve Board (governing the extension of credit by brokers and dealers) give rise to private cause of action by a customer where the illegal extensions of credit occurred after the promulgation of Federal Reserve Board Regulation X (governing the obtaining of securities credit by borrowers).

STATUTES AND REGULATIONS INVOLVED

The Regulations being reviewed, Regulation T of the Federal Reserve Board, 12 C.F.R. Part 220 (Credit by Brokers and Dealers) and Regulation X of the Federal Reserve Board, 12 C.F.R. Part 224 (Rules Governing Borrowers Who Obtain Securities Credit), are set forth in relevant part in Appendix D hereto. The relevant provisions of Section 7 of the Securities and Exchange Act of 1934 (15 U.S.C. § 78g), under which Regulations T and X were promulgated, are set forth in Appendix E hereto.

STATEMENT OF THE CASE

This case involves whether a state university can maintain a private cause of action for damages against its stockbroker where the broker extended credit to it illegally.

The University purchased numerous orders of stock through each of the respondents ("the brokers"). The stock was to be delivered "C.O.D." to the University. In a number of orders placed with each broker, the stock was not delivered within 35 days of the purchase date as required by Federal Reserve Board Regulation T. The University did not pay for these orders until the stock was delivered — more than 35 days after the purchase date. The brokers, however, did not obtain leave to extend credit to the University beyond the 35-day period as envisioned by Regulation T nor did they cancel the orders as required by Regulation T. The stock declined in value between the time the brokers should have canceled the orders (the end of the 35-day period) and the time the brokers finally effected delivery and received payment.

Based on these facts, the University filed suit against each of the brokers contending that the brokers' violation of Regulation T gave rise to a private cause of action in its favor for damages.[1] The District Court granted motions to dismiss in all cases except one (No. 75-1862) and in that case granted the broker's motion for judgment on the pleadings. The Tenth Circuit affirmed, holding that "no private cause of action exists for violations of Regulation T."

Jurisdiction in the United States District Court of Utah was invoked under Section 27 of the Securities and Exchange Act of 1934 (15 U.S.C. § 78aa).

[1]Against one of the brokers, Merrill, Lynch, Pierce, Fenner and Smith, the University filed two suits. The second suit was filed some months after the first to cover separate violations of Regulation T not caught by the first complaint.

REASONS FOR GRANTING THE WRIT

I. THE TENTH CIRCUIT OPINION CONFLICTS WITH A SUBSTANTIAL BODY OF CASE LAW WHICH ALLOWS A PRIVATE CAUSE OF ACTION TO ENFORCE REGULATION T.

Section 7 of the Securities Exchange Act of 1934, 15 U.S.C. § 78g, relates to margin requirements. Subsection (a) declares its purpose to prevent "the excessive use of credit for the purchase or carrying of securities." Subsection (c) provides that it is unlawful for a broker "directly or indirectly, to extend or maintain credit . . . for any customer, (1) on any security . . . , in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe . . . ." Regulation T was so prescribed. 12 C.F.R. Part 220. In essence it requires a broker to liquidate a customer's order if payment is not received within seven days from the date of purchase. If the customer in good faith agrees to make full cash payment upon delivery of the security, payment may be delayed until delivery which must take place within 35 days of the purchase. 12 C.F.R. § 220.4(c)(5).

Although Section 7(c) does not expressly provide a private cause of action for violation of Regulation T or any other regulations promulgated under it, numerous circuit courts have held that Section 7 and the regulations promulgated thereunder, including Regulations T and U,[2] may be the basis for a private civil action for damages or for rescission of a contract in violation of the regulations. *McCormick v. Esposito,* 500 F.2d 620 (5th Cir. 1974), *cert. denied* 420 U.S. 912 (1975), *Landry v. Hemphill, Noyes*

[2]Part 221 of 12 C.F.R. limits the amount of credit a bank may extend to a borrower for the purpose of purchasing securities. Known as Regulation U, its terms are similar to Regulation T.

& Co., 473 F.2d 365 (1st Cir. 1973), *cert. denied* 414 U.S. 1002 (1973), *reh. denied* 415 U.S. 960 (1974), *Naftalin & Co. v. Merrill Lynch*, 469 F.2d 1166 (8th Cir. 1972), *Goldman v. Bank of Commonwealth*, 467 F.2d 439 (6th Cir. 1972), *Pearlstein v. Scudder & German*, 429 F.2d 1136 (2d Cir. 1970), *cert. denied* 401 U.S. 1013 (1971), *Goldenberg v. Bache & Co.*, 270 F.2d 675 (5th Cir. 1959), *Jennings v. Boenning & Co.*, 388 F.Supp. 1294 (E.D. Pa. 1975), *aff'd.* 523 F.2d 889 (3d Cir. 1975). These courts have recognized that a private cause of action furthers the primary purpose of Section 7, which is "to prevent speculation on credit from draining a disproportionate share of the nation's credit resources into the stock market," *Naftalin, supra* at 1180. Some of them have also found that "A subsidiary purpose of § 7(c) [which makes it illegal to violate the rules and regulations promulgated pursuant to [§7] . . . is to protect the small investor from the dangers of excessive trading on credit" and that Regulation T furthers that purpose by "preventing the investor from engaging in speculative securities transactions which he could not, or would not, enter if the margin requirements were complied with," *Landry, supra* at 370. Thus, the primary basis for Section 7 civil actions is the implied remedy doctrine set out in *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964), in which the Court held that private actions may be a "necessary supplement to Commission action" in the enforcement of Section 14(a) of the Securities Exchange Act. This Court has recently reaffirmed the *Borak* doctrine in *Piper v. Chris Craft Industries, Inc.*, ... U.S. ...., 97 S. Ct. 926 (1977), *reh. denied* 97 S. Ct. 1668 (1977). See also *Cort v. Ash*, 422 U.S. 66, 82 (1975).

An additional basis is Section 29(b) of the Act, 15 U.S.C. § 78cc(b), which provides that any contract which violates the Act or regulations is void. This section has

been relied on in borrowers' actions to void a loan by a bank in contravention of Regulation U and in defense of the bank's claim to enforce the loan, see *Serzysko v. Chase Manhattan Bank*, 290 F.Supp. 74, 90 (S.D. N.Y. 1968), *aff'd. mem.* 409 F.2d 1360 (2d Cir. 1969), *cert. denied* 396 U.S. 904 (1969), *Stonehill v. Security Natl. Bank*, 68 F.R.D. 24 (S.D. N.Y. 1975).

A third basis relied on for implying a private cause of action is found in tort law. *Reader v. Hirsch & Co.*, 197 F. Supp. 111, 114 (S.D. N.Y. 1961), *Remar v. Clayton Securities Corporation*, 81 F. Supp. 1014 (D. Mass. 1949), *Appel v. Levine*, 85 F. Supp. 240 (S.D. N.Y. 1948). These cases reason that Section 7, at least in part, was intended to protect an individual like the plaintiff. Reliance is had on language in the House and Senate Reports on the Securities and Exchange Act of 1934 indicating that one of the intended effects of the margin provisions was to protect margin purchasers. H.R. Rep. No. 1383, 73rd Cong., 2d Sess. (1934) and S. Rep. No. 1139, 73rd Cong., 2d Sess. (1934).

Whatever the rationale followed: "The recent cases have been uniform in recognizing civil liability for violation of the margin requirements of Regulation T." *Avery v. Merrill Lynch, Pierce, Fenner & Smith*, 328 F. Supp. 677 (D.C. D.C. 1971).

In 1970 Congress amended the 1934 Act by adding § 7(f), 15 U.S.C. § 78g(f), which declares that it is illegal for any person to obtain, receive, or enjoy the extension of credit in connection with the purchase of securities contrary to the Federal Reserve System regulations. The Board of Governors of the Federal Reserve promulgated Regulation X, 12 C.F.R. Part 224, effective in 1971, which prohibits any borrower from "falsely," "willfully," or

"intentionally" obtaining credit in violation of Regulation T. 12 C.F.R. § 224.1. An innocent mistake made by a borrower in connection with the obtaining of credit is not a violation of Regulation X. 12 C.F.R. § 224.6(a).

Prior to these proceedings, the Tenth Circuit had never decided the question whether violations of Regulation T were the basis for civil liability. The Opinion below is not clear whether the Court merely refused to follow in the Tenth Circuit the great weight of authority allowing private causes of action to enforce Regulation T *quite apart from the 1970 amendment to Section 7*, or whether the Court's holding was based on the 1970 amendment and Regulation X promulgated under the amendment.[3] To the extent the Opinion was not based on the 1970 amendment to Section 7 and on Regulation X, the Tenth Circuit decision is clearly in conflict with square decisions of the First, Second, Third, Fifth, Sixth, and Eighth Circuits (see cases cited above) and should be reviewed by this Court.

To the extent that the opinion below holds that the additions of Section 7(f) and Regulation X eliminated *under all circumstances* a private cause of action based on broker margin violations, it is in conflict with a growing body of district court cases, at *least one of which* is before another Circuit on appeal, *McNeal v. Paine, Webber, Jackson & Curtis, Inc.*, 429 F. Supp. 359 (N.D. Ga. 1977), an opinion of Judge Edenfield on appeal to the Fifth Circuit, Docket No. 77-2033, holding that a private cause of action still lies to enforce Regulation T.[4]

---

[3]In *Palmer v. Thomson & McKinnon Auchincloss, Inc.*, [1977] Fed. Secs. L. Rptr. (CCH) ¶ 96,000 (D. Conn. 1977), Judge Blumenfeld interpreted the Tenth Circuit decision as being a refusal to follow "the Second Circuit's ruling in *Pearlstein, supra*, presenting a direct conflict between Circuits.

[4]In addition counsel for defendant in *Palmer, supra*, advises the undersigned that an appeal of that case to the Second Circuit is likely to be taken within two months.

Where a district court decision in conflict with a court of appeals decision sought to be reviewed is pending on appeal to another court of appeals, and the petitioner seeking review of the court of appeals decision cannot delay his petition for *certiorari* until the other appeal has been decided, this Court has granted the petition. *Gulf States Steel v. United States*, 287 U.S. 32 (1932).

Other district court cases in conflict with the Opinion below are discussed hereinafter.

II. WHETHER CIVIL LIABILITY STILL LIES FOR BROKER VIOLATIONS OF MARGIN REQUIREMENTS, AND UNDER WHAT CIRCUMSTANCES, IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

A. The Interpretation Placed by the Opinion Below on the Impact of Section 7(f) and Regulation X on Private Causes of Action for Violations of Regulation T is in Conflict With the Interpretation of the Federal Reserve Board.

This Court should review because the Opinion below is at odds with the consistent construction given Regulation X since its promulgation six years ago by the Federal Reserve Board. That the Board of Governors of the Federal Reserve Board submitted a brief *amicus curiae* in support of the University's petition for a rehearing to the Tenth Circuit indicates its disagreement with the Opinion. As that brief points out, in February, 1976, the Board of Governors published a manual entitled "Questions and Answers Illustrating Applications of Regulation U." Its preface states that the questions and answers have been prepared primarily for the benefit and guidance of banks. Under the heading *Liabilities for Violations* is Question No. 40 which states as follows:

> *Question.* —What are the potential liabilities of a bank or a borrower for violation of Regulation U? *Answer.* —As to the bank, Section 29(b) of the Securities Exchange Act of 1934 declares contracts made in violation of regulations issued thereunder void as to the rights of the violator. The party not responsible for the violation may rescind the contract and, in a proper case, sue for damages. Further, the bank may be criminally liable under various statutes, including those cited in the Form U-1 purpose statement, and as an aider and abetter of violations of Regulation X.
>
> A borrower may have criminal liability under various statutes, including those cited in the Form U-1 purpose statement, and under Regulation X.

Certainly this manual would not have indicated that a bank could be sued for damages or that a loan contract could be rescinded if it were thought that the private cause of action by a borrower had been totally eliminated.

As further noted by the Federal Reserve Board, the Form U-1 purpose statement which a bank is required to obtain from the borrower under section 221.3(a) of Regulation U contains the following warning at the top:

> A false or dishonest statement on this form may be punishable by fine or imprisonment (U.S. Code, Title 15, Section 78ff and Title 18, Sections 1001, 1005 and 1014). A borrower who falsely certifies the purpose of credit on this form or otherwise *willfully* or *intentionally* evades the provisions of Regulation U will also violate Federal Reserve Regulation X, "Rules Governing Borrowers Who Obtain Securities Credit." (emphasis added)

It is clear from this caveat that the Federal Reserve Board believes borrowers to be liable only for "intentional" and "willful" violations of Regulation X.

Since the Federal Reserve Board promulgated Regulation X, it is unlikely to accept the Tenth Circuit's view as conclusive. Since it is also charged with administration and enforcement of Regulation T, it is important that this Court settle the controversy. *Patterson v. Lamb*, 329 U.S. 539 (1947).

B. The Extent of the Impact of Regulation X Upon Regulation T is a Troublesome Question Involved in a Growing Body of Cases Pending in Lower Courts.

The complexity of fitting in Section 7(f) and Regulation X with the body of law allowing private enforcement of margin violations has been well understood by lower courts. As was stated by one:

> Reference to the recent amendments to [Section 7 of the 1934 Act] is futile. The act is a complexis. In the words of the board, 'Confusion hath now made this masterpiece.' "

Spoon v. Walston & Co., 345 F. Supp. 518, 521 (E.D. Mich. 1972) quoting Shakespeare, Macbeth, Act II, Scene II, *aff'd per curiam* 478 F.2d 246 (6th Cir. 1973). Although no case involving a direct conflict between Regulations T and X has been decided by another Circuit, district courts have decided a number of such cases *contra* to the Opinion below. *Palmer v. Thomson & McKinnon Auchincloss, Inc.*, *supra*, (in which the court requested the Federal Reserve Board to file an *amicus* brief, then stated it had the "unenviable task" of determining to what extent, if any, cases allowing private enforcement of margin violators "had been undercut" by the addition of Section 7(f)), *Lantz v. Wedbush, Noble, Cook, Inc.*, 418 F. Supp. 653 (D. Alas. 1976), *Neill v. David A. Noyes & Company*, 416 F. Supp. 78 (N.D. Ill. 1976), *Newman v. Pershing & Co.*,

Inc., 412 F. Supp. 463 (S.D. N.Y. 1975). See also dicta in *Freeman v. Marine Midland Bank-New York,* 419 F. Supp. 440 (E.D. N.Y. 1976), and *Bell v. J. D. Winer & Co., Inc.,* 392 F. Supp. 646 (S.D. N.Y. 1975 While so far as can be ascertained, only *McNeal v. Paine, Webber, Jackson & Curtis, Inc., supra,* has been appealed to another Circuit, the plethora of recent district court cases which have held that private enforcement of Regulation T is still a viable doctrine, *contra* to the Tenth Circuit, make an early and definitive ruling by this Court desirable. *United States v. Standard Oil Co.,* 332 U.S. 301, 302, n.2 (1947).

The extent to which Regulation X affects private actions to enforce Regulation T has been the subject of numerous articles reaching, not surprisingly, widely differing conclusions. See, e.g. DeVita, *Civil Liability for Margin Voilations — the Effect of Section 7(f) and Regulation X,* 43 Fordham L. Rev. 93 (1974); Dowling, *In Pari Delicto as a Defense to Violations of Margin Legislation Under the Securities and Exchange Act of 1934,* 9 U.S.F.L. Rev. 113 (1974); Silbaugh, *Regulation X: A Complexis,* 50 Notre Dame Law. 136 (1974); *Regulation X and Investor-Lender Margin Violation Disputes,* 57 Minn. L. Rev. 208 (1972).

It is already evident that the Opinion below, instead of having a salutory effect on this nettlesome area, has only added to the confusion. Two district courts which have cited the Opinion have given it differing constructions. Judge Blumenfeld in the *Palmer* case, *supra,* read it as a refusal to adopt in the Tenth Circuit the position allowing private actions that almost every other Circuit had taken in cases arising prior to the 1970 amendment.

Judge Pollack in *Drasner v. Thomson McKinnon Securities, Inc.,* [1977] 409 Sec. Reg. & L. Rep. (BNA) A-7 (S.D. N.Y. June 6, 1977), read the Opinion as holding that the 1970 amendment abolished the private right of action in *every situation* ("the [Tenth Circuit] went the whole way and held that no private right of action exists for violations of Regulation T.")

As noted by a commentator: "The future of private actions under Regulation T can largely be forecast by the past. Courts were in little agreement then and it is unlikely there will be much uniformity in the future *unless the Supreme Court makes a definitive ruling.*" Silbaugh, *supra,* pp. 156-157. (Emphasis added.)

C. The Future of Enforcement of Federal Reserve Board Regulations T, U, and G Require a Prompt Decision on the Availability of Private Actions.

The Opinion has far reaching implications concerning the enforcement not only of Regulation T but also of Federal Reserve Board Regulation U, which governs the extension of credit by banks for the purpose of purchasing or carrying margin stocks and of Federal Reserve Board Regulation G, governing the extension of securities credit by persons other than banks, brokers or dealers. 12 C.F.R., Parts 221 and 207, respectively. For if Section 7(f) abolished private actions to enforce Regulation T, it also abolished private actions to enforce Regulations U and G. 12 C.F.R. § 224.2(a)(1) and (3). The Federal Reserve Board, the Securities and Exchange Commission, and Congress should know soon to what extent, if any, they can continue to rely on private enforcement of margin re-

quirements. As was recently noted in *Palmer, supra:* "Margin violations are in the nature of 'victimless crimes' which neither broker nor borrower is likely to report. The likelihood of administrative enforcement is therefore remote." It is well known that a lack of facilities and personnel prevents inspection of more than a fraction of the registered broker dealers each year by the SEC.[5] Thus it is not surprising that the dozens of margin violations in these seven cases involving over a million dollars of illegally extended credit have not resulted in any administrative action.

In *Borak,* this Court noted in a different context that due to lack of adequate SEC resources: "Private enforcement of the proxy rules provides a necessary supplement to Commission action." *Supra,* 432. Relying primarily on this rationale, courts have allowed private suitors for over 20 years to more or less bear the burden of enforcing margin requirements. Does Section 7(f) change all this? The House Report notes:

> Part of the reason why Section 7 was originally enacted in its present form may have been a concern over putting the small investor at risk as to whether his broker or lender was complying with the regulations. The amendment has been carefully drawn to avoid this result.[6]

From the foregoing, it seems plain that Congress did not intend to deprive all investors of a private cause of action for breach of the initial margin requirements. *Palmer, supra.* However, the Tenth Circuit, without men-

[5]A study for the Special House Subcommittee on Investigations reports that in May, 1970, the Commission's largest office had only ten inspectors for the 2,000 broker-dealers in its area. Inspections, which often occur three years apart, are not comprehensive enough to be effective. STAFF OF SPECIAL HOUSE SUBCOMMITTEE ON INVESTIGATIONS, 92d CONG., 1st SESS., REPORT ON REVIEW OF SEC RECORDS OF THE DEMISE OF SELECTED BROKER DEALERS (Comm. Print 1971).

[6]Report of the House Committee on Banking and Currency, H.R. Rep. No. 91-975, U. S. Code Cong. & Admin. News 1970, 91st Cong. 2d Sess. at 4409.

tioning this pertinent legislative history, appears to hold that Section 7(f) abolishes private enforcement in this area. This Court should now decide whether margin requirements now require another system or enforcement so that the authorities may make the appropriate adjustments.

D. These Companioned Cases Present a Ripe Opportunity to Determine the Extent, if any, to Which Section 7(f) has Eliminated Private Enforcement of Federal Reserve Board Regulations.

The Opinion below disposed of the University's Regulation T claims as a matter of law, affirming orders of the district court granting motions to dismiss for failure to state a claim for relief in seven cases and a motion for judgment on the pleadings in the eighth case (No. 75-1862). The Tenth Circuit expressly refrained from ruling on whether summary judgment for the brokers would have been proper. Thus there is no dispute as to facts. This Court has the opportunity to decide the threshold question whether Section 7 of the '34 Act gives rise to implied private rights of action to enforce Federal Reserve Board securities credit regulations and if so, the narrow question as to what extent Section 7(f) affects those rights. More particularly, this Court has the opportunity to decide whether Section 7(f) eliminates private enforcement of Regulation T (and U and G) in all circumstances, as was the clear holding of Judge Anderson in the District Court below (pp. 32A and 33A), or whether its effect was merely to "reinstate" the *in pari delicto* defense which had been disallowed in *Pearlstein, supra.*[7]

[7]Holding that Section 7(f) merely restores to the broker certain defenses based on comparative fault, such as *in pari delicto,* are *Palmer, supra,* at f.n.15, and *Lantz, supra.* Consistent with this view is the reasoning of Judge Tyler in *Bell, supra,* and the comments of the Second Circuit in *Pearlstein v. Scudder & German,* 527 F.2d 1141 (2d Cir. 1975) ("*Pearlstein II*") on its earlier decision ("*Pearlstein I,*" *supra*).

Finally, there is no doubt that these respondents, including some of the largest brokers on Wall Street, will adequately present the industry view. On the other side, the Federal Reserve Board has already participated in th proceedings below and can be expected to participate in any proceedings before this Court in support of the continuing validity of private enforcement of its securities credit regulations.

CONCLUSION

The Opinion below is the first from a circuit court to grapple with a tough problem. District courts citing it have already placed different constructions upon it and, significantly, no district court has followed or even approved it while three cases have either disapproved or ignored it.[8] This Court should review, if not to resolve what Judge Edenfield in *Palmer, supra,* believed to be a square conflict with the *Pearlstein I* pre-1970 body of law, to resolve potential conflicts between circuits which surely will arise if the present pace of district court litigation in this area continues as it likely will. Moreover, the importance to the federal agencies charged with administering and enforcing securities credit regulations of knowing whether the Opinion below is merly an aberration or sounds the death knell for private enforcement clearly calls for authoritative pronouncement now.

---

[8]The *Palmer, Drasner,* and *McNeal* cases, *supra.*

For all of these reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

ROBERT B. HANSEN
Utah Attorney General

DAVID L. WILKINSON
Assistant Attorney General

State Capitol
Salt Lake City, Utah 84114

Counsel for Petitioner

DATED: July 18, 1977